

Washington, DC – Today, Congressman Joe Sestak (D-PA), member of the House Armed Services Committee, voted against the Senate Foreign Intelligence Surveillance Improvement Act (FISA), which the White House supported, and disagreed with the Democratic Leadership which decided to submit the Senate's version of the FISA bill to vote on rather than the version that the House leaders had worked out earlier with Admiral Michael McConnell, the Director of National Intelligence (DNI). — “In the House we worked with Admiral McConnell to address all of his concerns with FISA and drafted a bill that strengthened our security and protected our liberties. On the other hand, the Senate bill gives far too much unchecked power to the Executive Branch, to both Attorney General Alberto Gonzalez and President Bush,” said Congressman Sestak. “Some will argue that Senate version will be fixed in 180 days when it must be updated again, but I believe it should be changed now. I disagree with the decision of the Democratic Leadership not to have brought the House version to the floor. I believe strongly in doing everything possible to keep our nation safe, while properly balancing our civil liberties – but this is the wrong bill to do it.”

The House of Representatives had originally voted for its version of the FISA legislation on Friday night (August 3, 2007), but the bill was brought to the floor under suspension rules, which meant it needed a 2/3 majority to pass. It could have been brought to the floor again on Saturday under “normal rules” for a majority vote, although this would have meant that under the “pro forma” rules for the House, the House and the Senate would have been compelled to remain and work out a common version in the upcoming weeks if they wanted a bill to be presented to the President, rather than take a recess.

“I believe that when we are at war, no recess should be taken if it is necessary to make sure the proper bill is written that will improve our intelligence gathering capabilities while safeguarding the liberties that make this nation admired all over the world,” said Congressman Sestak. “Given the global war on terrorism, we should not take time off when work needs to be done to both protect the American people and their civil liberties as written in our Constitution.”

The House version of the FISA revision differs from the Senate bills in several significant ways. The Senate bill does the following:

- 1) Authorizes warrantless surveillance and searches of Americans' phone calls, emails, home offices, and personal records for at least three months and for however long an appeal to the Court of Review and the Supreme Court takes, as long as the search is “concerning a person

abroad.”

- 2) Allows Attorney General Gonzalez to authorize all surveillance into and out of the US, and only permits the FISA court to review the Attorney General's procedures on a “clearly erroneous” standard.
- 3) Contains no review or audit of US person communications by the Justice Department.

In contrast, the House bill would:

- 1) Clarify that no court order is required for foreign-to-foreign communications that pass through the US.
- 2) Reiterates that individual warrants, based on probable cause, are required when surveillance is directed at people within the US.
- 3) Requires the Attorney General to submit procedures for international surveillance to the FISA court for approval, and authorizes the court to issue “basket warrants” (a wide-ranging scope of calls) for individuals or foreign powers (including al Qaeda) outside the US based on a review of those procedures, but does not require individual warrants for foreign surveillance.

The FISA court was created in 1978 to allow the intelligence community to listen-in to foreign communications – such as telephone calls – while protecting Americans' privacy. It was needed because there were concerns at the time that our intelligence gathering agencies were listening to Americans' conversation without cause. The point of the court is that the Attorney General would need to come to the FISA court to listen to calls made outside the country to someone inside America that is suspected of posing threats. The law already allows the Attorney General to listen-in for 72 hours before going to the FISA court for a warrant – in an emergency – so that coming to the court will not interfere with timely surveillance on terrorist activity. In short, an intelligence agency can listen for three days, in an emergency, then go get a warrant while continuing its investigation.

The Director of National Intelligence, Admiral Michael McConnell, came to Congress with a list of things that needed to be addressed with the FISA system.

His concerns were:

- 1) The original law prevented law enforcement agencies from listening to conversations that

were made and received in countries outside the US but were routed through it. In other words, if a person in Europe called a person in Asia but that call went through the US, it was illegal to listen to that call. The House fixed this loophole and allows law enforcement to listen to these calls.

2) The scope of the intelligence-gathering FISA needed was too limited and he proposed it be changed from only listening for conversations that 'relate to terrorism' to those that 'relate to foreign intelligence.' The House agreed to this change.

3) The requirement that one FISA court decide how recurring conversations into the US from foreign targets be handled. The House eliminated this requirement.

4) The extent of 'basket warrants' (a wide-ranging scope of calls) needed to be changed so that if one individual made multiple calls, multiple warrants are not needed. The House agreed to this change.

All of these problems were addressed and Admiral McConnell approved of the bill, stating it helped national security needs. It was only after the White House intervened that he found subsequent problems with the legislation and asked for more changes.

"As Director of the Navy's anti-terrorism unit after 9/11, I saw the value of data-mining facilitated by proper eavesdropping. However, I also understand the FISA system, and the proper balance of civil liberties with national security needs. The Senate version – which the White House supports – does not provide civil liberties protection with timely FISA court oversight; the House version does," said Congressman Sestak. "I therefore voted against the Senate version, but supported the House version, which was defeated the evening before. However, the Democratic Leadership should have brought the House version to the floor for a majority vote today, where it would have passed, instead of offering the Senate version. The House should have then been willing to remain in session during the recess, compelling the Senate to return to work on a mutually agreed-upon bill on such a defining security and constitutional issue."

Born and raised in Delaware County, former 3-star Admiral Joe Sestak served in the Navy for 31 years and now serves as the Representative from the 7th District of Pennsylvania. He led a series of operational commands at sea, including Commander of an aircraft carrier battle group of 30 U.S. and allied ships with over 15,000 sailors and 100 aircraft that conducted operations in Afghanistan and Iraq. After 9/11, Joe was the first Director of "Deep Blue," the Navy's anti-terrorism unit that established strategic and operations policies for the "Global War on Terrorism." He served as President Clinton's Director for Defense Policy at the National Security Council in the White House, and holds a Ph.D. in Political Economy and Government from Harvard University. According to the office of the House Historian, Joe is the highest-ranking former military officer ever elected to the U.S. Congress.